

U.S. Serial No. 09/811,248

REMARKS

Claims 1-55 are cancelled and 56-73 are pending in the application. Claims 56-63 are under final rejection and claims 64-73 are withdrawn. Claims 56-63 are amended hereinabove in order to clarify the claimed subject matter and place it in better condition for allowance or appeal.

Claims 56-63 are rejected under 35 USC 102(b) as being inherently anticipated by Park et al. (Soc. for Biomaterials). Average pore sizes are not disclosed for the materials disclosed by the cited reference. Nevertheless, the Action deems that the disclosed materials inherently possess the claimed average pore size range due to similarities in materials and workup.

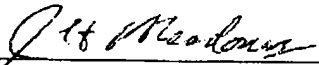
In rebuttal, Applicants maintain that the cited materials and methods do not "necessarily and inevitably" afford the claimed hydrogel foams. Schering Corp. v. Geneva Pharms. et al. (CAFC, 2003). Here, a contention of inherent anticipation is relied upon to establish not only an element of the claimed subject matter, but its entirety. However, the mere possibility that a certain characteristic may be present in the prior art is not sufficient to establish inherency of that characteristic. In re Rijckaert, (CAFC, 1993).

Reexamination and reconsideration are respectfully requested. Upon a finding that the application is in condition for allowance, a Notice of Allowability is solicited.

U.S. Serial No. 09/811,248

If, in the opinion of the Examiner, a telephone conversation could expedite prosecution, the Examiner is invited to telephone the undersigned at the number given below.

Respectfully submitted,

  
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**CERTIFICATE OF TRANSMISSION**

I, James H. Meadows, hereby certify that this correspondence is facsimile transmitted to the U.S. Patent and Trademark Office on the date December 13, 2005

Signature: 